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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	FIL ORG ID: 995-4543
)	
THE COMMISSIONER OF BUSINESS)	CITATIONS PURSUANT TO
OVERSIGHT,)	CORPORATIONS CODE SECTIONS: 31406;
)	31110; 31200 AND 31201:
Complainant,)	
)	DESIST AND REFRAIN ORDERS
v.)	PURSUANT TO CORPORATIONS CODE
)	SECTIONS 31110, 31200 AND 31201
CASA DEL CAFFÈ VERGNANO, S.P.A.,)	
CAFFÈ VERGNANO USA CORP.,)	
CAROLINA VERGNANO, PIETRO)	
VERGNANO, and TOMMASO LAMBERT,)	
)	
Respondents.)	
)	
)	

Jan Lynn Owen, the California Commissioner (“Commissioner”) of the Department of Business Oversight (“Department”), finds the following:

I

BACKGROUND

1. Casa Del Caffè Vergnano, S.p.A. (“Casa Del Caffè Vergnano”) was an entity formed under the laws of the country of Italy with its principal place of business in Torino, Italy. Casa Del Caffè Vergnano maintained a website at www.caffevergnano.com.

2. Caffè Vergnano USA Corp. (“Caffè Vergnano USA”), a Delaware corporation, was a wholly owned subsidiary of Casa Del Caffè Vergnano with its principal place of business in Torino, Italy.

3. Carolina Vergnano was an Export Manager of Casa Del Caffè Vergnano and Director of Caffè Vergnano USA.

4. Pietro Vergnano was an Acquisition Manager of Casa Del Caffè Vergnano and a Director of Caffè Vergnano USA.

5. Tommaso Lambert (“Lambert”) was a Business Development Manager of Casa Del Caffè Vergnano.

6. The Commissioner is the head of the Department of Business Oversight and is responsible for administering and enforcing the California Franchise Investment Law (“FIL”) (Corporations Code § 31000, et seq.), and registering the offer and sale of franchises in California.

II

VIOLATIONS OF THE FIL

A. Offer and Sale of Unregistered Franchise

7. Pursuant to section 31110, it shall be unlawful for any person to offer or sell any franchises in California unless the offer of the franchise has been registered under Chapter 2 or exempted under Chapter 1 (commencing with section 31100) of Part 2 of the FIL.

8. Beginning in or about May 2010, Casa Del Caffè Vergnano, Carolina Vergnano and Lambert offered a “Caffè Vergnano 1882” franchise, an Italian-style coffee house franchise that markets, sells, and distributes Casa Del Caffè Vergnano products branded with its trade name, to a California resident.

9. From May 2010 to September 2010, Casa Del Caffè Vergnano, Lambert, and a franchisee negotiated the sale of a Caffè Vergnano 1882 franchise in California.

10. On or about September 3, 2010, and prior to executing a franchise agreement, a California franchisee wired a partial payment to Casa Del Caffè Vergnano for the right to operate a Caffè Vergnano 1882 coffee house in San Diego, California.

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1 11. Three weeks later, on or about September 23, 2010, Casa Del Caffè Vergnano,
2 Carolina Vergnano, and the California franchisee executed an agreement for the purchase of the
3 Caffè Vergnano 1882.

4 12. The Caffè Vergnano 1882 coffee house offered and sold by Casa Del Caffè
5 Vergnano, Carolina Vergnano and Lambert constituted a franchise within the meaning of section
6 31005.

7 13. Casa Del Caffè Vergnano, Carolina Vergnano and Lambert were not registered to
8 offer or sell franchises with the California Department of Business Oversight at the time, in
9 violation of section 31110.

10 B. Failing to Disclose a Material Fact to the Commissioner

11 14. Pursuant to section 31200, it is unlawful for any person willfully to fail to disclose a
12 material fact in any application, notice, or report filed with the Commissioner.

13 15. On January 14, 2011, four months after the execution of the franchise agreement, as
14 described above, Caffè Vergnano USA filed an initial franchise registration with the Department of
15 Business Oversight.

16 16. On or about March 20, 2011, the Department of Business Oversight approved the
17 initial franchise registration of Caffè Vergnano USA.

18 17. Caffè Vergnano USA, Carolina Vergnano and Pietro Vergnano failed to disclose that
19 the parent company, Casa Del Caffè Vergnano, had offered and sold a franchise in California, in
20 violation of section 31200.

21 C. Failing to Provide Franchisee the Franchise Disclosure Document Prior to Sale of Franchise

22 18. Pursuant to section 31119, it is unlawful to sell any franchise in this state that is
23 subject to registration under the FIL without first providing to the prospective franchisee, at least 14
24 days prior to the execution by the prospective franchisee of any binding franchise or other
25 agreement, or at least 14 days prior to the receipt of any consideration, whichever occurs first, a
26 copy of the franchise disclosure document, together with a copy of all proposed agreements relating
27 to the sale of the franchise.

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1 19. Casa Del Caffè Vergnano failed to provide a copy of the franchise disclosure
2 document relating to the Caffè Vergnano 1882 coffee house to the prospective California franchisee
3 prior to the execution of the franchise agreement and receiving consideration from the franchisee, in
4 violation of section 31119.

5 D. Untrue Statements of Material Facts to Franchisee

6 20. Pursuant to section 31201, it is unlawful for any person to offer or sell a franchise in
7 California by means of any written or oral communication not enumerated in section 31200 which
8 includes an untrue statement of a material fact or omits to state a material fact necessary in order
9 to make the statements made, in light of the circumstances under which they were made, not
10 misleading.

11 21. On or about March 30, 2011, six months after the execution of the franchise
12 agreement, and receipt of three wired payments from the California franchisee, Casa Del Caffè
13 Vergnano provided the California franchisee a franchise disclosure document, which contained
14 materially different information than the offering materials.

15 22. In connection with the offer or sale of the Caffè Vergnano 1882 franchise, Casa Del
16 Caffè Vergnano, Carolina Vergnano, and Lambert made the following untrue statements of material
17 facts or failed to disclose material facts to the franchisee, in violation of section 31201:

18 a. The franchise offering materials described a set amount for the annual service fee,
19 which the California franchisee understood to be the royalties. Contrarily, the franchise
20 disclosure document disclosed royalties of 4.5% of Gross Sales;

21 b. During the sales negotiations, the California franchisee was assured that Casa Del
22 Caffè Vergnano would closely manage and support the franchisee through the entire process
23 of opening and operating the Caffè Vergnano 1882 franchise. Contrarily, Casa Del Caffè
24 Vergnano inadequately managed and supported the opening and operation of the franchise.
25 For example, the California franchisee built the San Diego Caffè Vergnano 1882 coffee
26 house according to an architectural design that the California franchisee had to separately
27 select and purchase; and

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c. The franchise offering materials described the total investment amount of approximately \$200,000.00. However, it cost the California franchisee at least \$400,000.00 to open the San Diego Caffè Vergnano 1882 coffee house.

III

CITATIONS

23. Corporations Code section 31406 authorizes the Commissioner to issue a citation not exceeding \$2,500.00 for each violation of any provision of the FIL or any rule or under thereunder.

24. Corporations Code section 31406 provides:

(a) If, upon inspection or investigation, based upon a complaint or otherwise, the commissioner has cause to believe that a person is violating any provision of this division or any rule or order promulgated pursuant to this division, the commissioner may issue a citation to that person in writing describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars (\$2,500) per violation and shall contain reference to this section, including the provisions of subdivision (c). All penalties collected under this section shall be deposited in the State Corporations Fund.

(b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If within 60 days from the receipt of the citation, the person cited fails to notify the commissioner that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and order compelling the cited person to comply with the order of the commissioner. The application shall include a certified copy of the final order of the commissioner and shall constitute a sufficient showing to warrant the issuance of the judgment and order.

25. Corporations Code section 31110 provides:

On and after April 15, 1971, it shall be unlawful for any person to offer or sell any franchise in this state unless the offer of the franchise has been registered under this part or exempted under Chapter 1 (commencing with Section 31100) of this part.

26. **CITATION A.** During the period of May 2010 to September 2010, Casa Del Caffè Vergnano, S.p.A., Carolina Vergnano, and Tommaso Lambert offered and sold a franchise in

1 California that was subject to registration under the FIL without the offer and/or sale first being
2 registered, in violation of section 31110.

3 27. Corporations Code section 31200 provides:

4 It is unlawful for any person willfully to make any untrue statement of a material
5 fact in any application, notice or report filed with the commissioner under this
6 law, or willfully to omit to state in any such application, notice, or report any
7 material fact which is required to be stated therein, or fail to notify the
8 commissioner of any material change as required by Section 31123.

9 28. **CITATION B.** During the period of January 2011 through March 2011, Caffè
10 Vergnano USA Corp., Carolina Vergnano, and Pietro Vergnano willfully failed to disclose a
11 material fact in an application filed with the Commissioner, in violation of section 31200.

12 29. Corporations Code section 31201 provides:

13 It is unlawful for any person to offer or sell a franchise in this state by means of
14 any written or oral communication not enumerated in Section 31200 which
15 includes an untrue statement of a material fact or omits to state a material fact
16 necessary in order to make the statements made, in the light of the circumstances
17 under which they were made, not misleading.

18 30. **CITATION C.** During the period of May 2010 through September 2010, Casa Del
19 Caffè Vergnano, S.p.A., Carolina Vergnano, and Tommaso Lambert offered or sold a franchise in
20 this state by means of a written or oral communication which included untrue statements of material
21 facts or omitted to state a material fact necessary in order to make the statements made, in the light
22 of the circumstances under which they were made, not misleading, in violation of section 31201, by
23 making material misrepresentations regarding the service fee amount, the level of management and
24 support provided to the franchisee, and the franchise investment amount.

25 31. Pursuant to section 31406, Casa Del Caffè Vergnano, S.p.A., Caffè Vergnano USA
26 Corp., Carolina Vergnano, Pietro Vergnano, and Tommaso Lambert, jointly and severally, are
27 hereby ordered to pay an administrative penalty of \$2,500.00 for each of the three foregoing
28 violations for the total amount of \$7,500.00, within 30 days of the finality of this order. If within 60
days from the receipt of these citations, Casa Del Caffè Vergnano, S.p.A., Caffè Vergnano USA
Corp., Carolina Vergnano, Pietro Vergnano, and Tommaso Lambert fail to notify the Commissioner

1 that they intend to request a hearing as described in section 31406, subdivision (d), then this citation
2 shall be deemed final.

3 32. The administrative penalties in the amounts stated above shall be made in the form
4 of a cashier's check payable to the "Department of Business Oversight" and submitted to the
5 attention of Counsel Afsaneh Eghbaldari, 1350 Front Street, Room 2034, San Diego, California
6 92101, no later than 60 days from the date of these orders.

7 IV

8 **DESIST AND REFRAIN ORDER**

9 33. Corporations Code section 31402 authorizes the Commissioner to order any person
10 to desist and refrain from violating any provide of the FIL or any rule or order thereunder.

11 34. Corporations Code section 31402 provides:

12 If, in the opinion of the commissioner, the offer of any franchise is subject to
13 registration under this law and it is being, or it has been, offered for sale
14 without the offer first being registered, the commissioner may order the
15 franchisor or offeror of that franchise to desist and refrain from the further
16 offer or sale of that franchise unless and until the offer has been duly
17 registered under this law. If, after that order has been made, a request for a
18 hearing is filed in writing within 60 days from the date of service of the order
19 by the person to whom the order was directed, a hearing shall be held in
20 accordance with Chapter 5 (commencing with Section 11500) of Part 1 of
21 Division 3 of Title 2 of the Government Code, and the commissioner shall
22 have all of the powers granted under that chapter. Unless that hearing is
23 commenced within 15 business days after the request is made (or the person
24 affected consents to a later date), the order shall be deemed rescinded.

25 If that person fails to file a written request for a hearing within 60 days from
26 the date of service of the order, the order shall be deemed a final order of the
27 commissioner and shall not be subject to review by any court or agency,
28 notwithstanding Section 31501.

29 The foregoing facts establish violations of the FIL by: (1) Casa Del Caffè Vergnano, S.p.A.,
30 Carolina Vergnano, and Tommaso Lambert offered and sold a franchise in California that was
31 subject to registration under the FIL without the offer and/or sale first being registered, in violation
32 of section 31110; (2) Caffè Vergnano USA Corp., Carolina Vergnano, and Pietro Vergnano
33 willfully failed to disclose a material fact in an application filed with the Commissioner, in violation
34 of section 31200; and (3) Casa Del Caffè Vergnano, S.p.A., Carolina Vergnano, and Tommaso
35 Lambert offered or sold a franchise in this state by means of a written or oral communication which

1 included untrue statements of material facts or omitted to state a material fact necessary in order to
2 make the statements made, in the light of the circumstances under which they were made, not
3 misleading, in violation of section 31201, by making material misrepresentations regarding the
4 service fee amount, the level of management and support provided to the franchisee, and the
5 franchise investment amount.

6 Pursuant to section 31406, Casa Del Caffè Vergnano, S.p.A., Caffè Vergnano USA Corp.,
7 Carolina Vergnano, Pietro Vergnano and Tommaso Lambert are hereby ordered to desist and
8 refrain from further violations of sections 31110, 31200 and 31201.

9 These orders are necessary, in the public interest, for the protection of franchisees and
10 consistent with the purposes, policies and provisions of the FIL.

11 Dated: November 5, 2015
12 Sacramento, California

JANN LYNN OWEN
Commissioner of Business Oversight

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14 By _____
15 MARY ANN SMITH
16 Deputy Commissioner
17 Enforcement Division
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